
By: **Delegates Marriott, Benson, Gutierrez, Kirk, Nathan-Pulliam, Paige,
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Introduced and read first time: February 5, 2003

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Ex-Prisoners and Offenders - Equal Employment Opportunity**

3 FOR the purpose of declaring that the policy of the State of Maryland is to assure that
4 all persons with arrest records or conviction records not directly related to
5 employment have an equal opportunity for employment; defining certain terms;
6 making certain employment practices by certain persons that discriminate
7 against certain individuals with certain arrest records and conviction records
8 unlawful; establishing certain factors for certain employers to consider in
9 determining whether certain arrest records and conviction records are directly
10 related to certain employment; establishing a civil cause of action for certain
11 unlawful employment practices; requiring certain consumer reporting agencies
12 that furnish certain consumer reports to notify certain persons of certain
13 provisions of law and delete certain information; requiring certain employers to
14 provide written statements setting forth reasons for denial of employment to
15 certain persons; making a violation of the requirement to provide written
16 statements a misdemeanor and establishing penalties for violations;
17 establishing immunity from civil liability for certain employers for negligence in
18 hiring certain individuals; and generally relating to providing equal
19 employment opportunity to certain individuals with arrest records or conviction
20 records.

21 BY repealing and reenacting, with amendments,
22 Article 49B - Human Relations Commission
23 Section 14 and 16
24 Annotated Code of Maryland
25 (1998 Replacement Volume and 2002 Supplement)

26 BY adding to
27 Article 49B - Human Relations Commission
28 Section 15(k) and (l), 16A, and 16B
29 Annotated Code of Maryland
30 (1998 Replacement Volume and 2002 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Commercial Law
3 Section 14-1210
4 Annotated Code of Maryland
5 (2000 Replacement Volume and 2002 Supplement)

6 BY adding to
7 Article - Courts and Judicial Proceedings
8 Section 5-427
9 Annotated Code of Maryland
10 (2002 Replacement Volume)

11 BY adding to
12 Article - Labor and Employment
13 Section 3-708
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2002 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article 49B - Human Relations Commission**

19 14.

20 It is hereby declared to be the policy of the State of Maryland, in the exercise of
21 its police power for the protection of the public safety, public health and general
22 welfare, for the maintenance of business and good government and for the promotion
23 of the State's trade, commerce and manufacturers to assure all persons equal
24 opportunity in receiving employment and in all labor management-union relations
25 regardless of race, color, religion, ancestry or national origin, sex, age, marital status,
26 sexual orientation, [or] disability unrelated in nature and extent so as to reasonably
27 preclude the performance of the employment, OR ARREST RECORD OR CONVICTION
28 RECORD THAT IS NOT DIRECTLY RELATED TO EMPLOYMENT, and to that end to
29 prohibit discrimination in employment by any person, group, labor organization,
30 organization or any employer or his agents.

31 15.

32 For the purposes of this subtitle:

33 (K) "ARREST RECORD" MEANS ANY INFORMATION INDICATING THAT AN
34 INDIVIDUAL HAS BEEN QUESTIONED, APPREHENDED, TAKEN INTO CUSTODY OR
35 DETENTION, HELD FOR INVESTIGATION, ARRESTED, CHARGED WITH, INDICTED, OR
36 TRIED FOR ANY FELONY, MISDEMEANOR, OR OTHER OFFENSE BY ANY LAW
37 ENFORCEMENT OR MILITARY AUTHORITY.

1 (L) "CONVICTION RECORD" MEANS ANY INFORMATION INDICATING THAT AN
2 INDIVIDUAL HAS BEEN CONVICTED OF ANY FELONY, MISDEMEANOR, OR OTHER
3 OFFENSE, HAS BEEN ADJUDICATED DELINQUENT, HAS BEEN LESS THAN
4 HONORABLY DISCHARGED, OR HAS BEEN PLACED ON PROBATION, FINED,
5 IMPRISONED, PLACED ON EXTENDED SUPERVISION, OR PAROLED BY ANY LAW
6 ENFORCEMENT OR MILITARY AUTHORITY.

7 16.

8 (a) It shall be an unlawful employment practice for an employer:

9 (1) To fail or refuse to hire or to discharge any individual, or otherwise to
10 discriminate against any individual with respect to the individual's compensation,
11 terms, conditions, or privileges of employment, because of such individual's race,
12 color, religion, sex, age, national origin, marital status, sexual orientation, genetic
13 information, [or] disability unrelated in nature and extent so as to reasonably
14 preclude the performance of the employment, OR ARREST RECORD OR CONVICTION
15 RECORD THAT IS NOT DIRECTLY RELATED TO EMPLOYMENT, or because of the
16 individual's refusal to submit to a genetic test or make available the results of a
17 genetic test;

18 (2) To limit, segregate, or classify its employees or applicants for
19 employment in any way which would deprive or tend to deprive any individual of
20 employment opportunities or otherwise adversely affect the individual's status as an
21 employee, because of the individual's race, color, religion, sex, age, national origin,
22 marital status, sexual orientation, genetic information, [or] disability unrelated in
23 nature and extent so as to reasonably preclude the performance of the employment,
24 OR ARREST RECORD OR CONVICTION RECORD THAT IS NOT DIRECTLY RELATED TO
25 EMPLOYMENT, or because of the individual's refusal to submit to a genetic test or
26 make available the results of a genetic test; or

27 (3) To request or require genetic tests or genetic information as a
28 condition for hiring or determining benefits.

29 (b) It shall be an unlawful employment practice for an employment agency to
30 fail or refuse to refer for employment, or otherwise to discriminate against, any
31 individual because of the individual's race, color, religion, sex, age, national origin,
32 marital status, sexual orientation, [or] disability unrelated in nature and extent so
33 as to reasonably preclude the performance of the employment, OR ARREST RECORD
34 OR CONVICTION RECORD THAT IS NOT DIRECTLY RELATED TO EMPLOYMENT, or to
35 classify or refer for employment any individual on the basis of the individual's race,
36 color, religion, sex, age, national origin, marital status, sexual orientation, [or]
37 disability unrelated in nature and extent so as to reasonably preclude the
38 performance of the employment, OR ARREST RECORD OR CONVICTION RECORD THAT
39 IS NOT DIRECTLY RELATED TO EMPLOYMENT.

40 (c) It shall be an unlawful employment practice for a labor organization: (1) to
41 exclude or to expel from its membership, or otherwise to discriminate against, any
42 individual because of the individual's race, color, religion, sex, age, national origin,

1 marital status, sexual orientation, [or] disability unrelated in nature and extent so
2 as to reasonably preclude the performance of the employment, OR ARREST RECORD
3 OR CONVICTION RECORD THAT IS NOT DIRECTLY RELATED TO EMPLOYMENT; (2) to
4 limit, segregate or classify its membership, or to classify or fail or refuse to refer for
5 employment any individual, in any way which would deprive or tend to deprive any
6 individual of employment opportunities, or would limit such employment
7 opportunities or otherwise adversely affect the individual's status as an employee or
8 as an applicant for employment, because of such individual's race, color, religion, sex,
9 age, national origin, marital status, sexual orientation, [or] disability unrelated in
10 nature and extent so as to reasonably preclude the performance of the employment,
11 OR ARREST RECORD OR CONVICTION RECORD THAT IS NOT DIRECTLY RELATED TO
12 EMPLOYMENT; or (3) to cause or attempt to cause an employer to discriminate against
13 an individual in violation of this section.

14 (d) It shall be an unlawful employment practice for any employer, labor
15 organization, or joint labor-management committee controlling apprenticeship or
16 other training or retraining, including on-the-job training programs to discriminate
17 against any individual because of the individual's race, color, religion, sex, age,
18 national origin, marital status, sexual orientation, [or] disability unrelated in nature
19 or extent so as to reasonably preclude the performance of the employment, OR ARREST
20 RECORD OR CONVICTION RECORD THAT IS NOT DIRECTLY RELATED TO
21 EMPLOYMENT, in admission to, or employment in, any program established to
22 provide apprenticeship or other training.

23 (e) It is an unlawful employment practice for an employer, labor organization,
24 or employment agency to print or cause to be printed or published any notice or
25 advertisement relating to employment by the employer or membership in or any
26 classification or referral for employment by the labor organization, or relating to any
27 classification or referral for employment by the agency, indicating any preference,
28 limitation, specification, or discrimination, based on race, color, religion, sex, age,
29 national origin, sexual orientation, or on the basis of a disability, OR ABSENCE OF AN
30 ARREST RECORD OR CONVICTION RECORD. However, a notice or advertisement may
31 indicate a preference, limitation, specification, or discrimination based on religion,
32 sex, age, national origin, [or] disability, OR ABSENCE OF AN ARREST RECORD OR
33 CONVICTION RECORD when religion, sex, age, national origin, [or] disability, OR
34 ABSENCE OF AN ARREST RECORD OR CONVICTION RECORD is a bona fide
35 occupational qualification for employment.

36 (f) It is an unlawful employment practice for an employer to discriminate
37 against any of its employees or applicants for employment, for an employment agency
38 to discriminate against any individual, or for a labor organization to discriminate
39 against any member thereof or applicant for membership, because the individual has
40 opposed any practice made an unlawful employment practice by this subtitle or
41 because the individual has made a charge, testified, assisted, or participated in any
42 manner in an investigation, proceeding, or hearing under this subtitle.

43 (g) Notwithstanding any other provision of this subtitle, (1) it is not an
44 unlawful employment practice for an employer to hire and employ employees, for an
45 employment agency to classify, or refer for employment any individual, for a labor

1 organization to classify its membership or to classify or refer for employment any
2 individual, or for an employer, labor organization or joint labor-management
3 committee controlling apprenticeship or other training or retraining programs to
4 admit or employ any individual in any such program, on the basis of the individual's
5 religion, national origin or disability in those instances where sex, age, religion,
6 national origin, [or] disability, OR ABSENCE OF AN ARREST RECORD OR CONVICTION
7 RECORD is a bona fide occupational qualification reasonably necessary to the normal
8 operation of that particular business or enterprise; (2) it is not an unlawful
9 employment practice for an employer to establish standards concerning an employee's
10 dress and grooming if the standards are directly related to the nature of the
11 employment of the employee; (3) it is not an unlawful employment practice for a
12 school, college, university, or other educational institution or institution of learning to
13 hire and employ employees of a particular religion if the school, college, university, or
14 other educational institution or institution of learning is, in whole or in substantial
15 part, owned, supported, controlled, or managed by a particular religion or by a
16 particular religious corporation, association, or society or if the curriculum of the
17 school, college, university, or other educational institution or institution of learning is
18 directed toward the propagation of a particular religion; and (4) it is not unlawful for
19 an employer, employment agency or labor organization to observe the terms of a bona
20 fide seniority system or any bona fide employee benefit plan such as a retirement,
21 pension or insurance plan, which is not a subterfuge to evade the purposes of this
22 subtitle; however, no employee benefit plan shall excuse the failure to hire any
23 individual.

24 (h) Nothing contained in this subtitle shall be interpreted to require any
25 employer, employment agency, labor organization, or joint labor-management
26 committee subject to this subtitle to grant preferential treatment to any individual or
27 to any group because of the race, color, religion, sex, age, national origin, sexual
28 orientation, [or] disability, OR ARREST RECORD OR CONVICTION RECORD of the
29 individual or group on account of an imbalance which may exist with respect to the
30 total number or percentage of persons of any race, color, religion, sex, age, national
31 origin, sexual orientation or persons with disabilities OR ARREST RECORDS OR
32 CONVICTION RECORDS employed by any employer, referred or classified for
33 employment by any employment agency or labor organization, admitted to
34 membership or classified by any labor agency or labor organization, admitted to
35 membership or classified by any labor organization, or admitted to, or employed in,
36 any apprenticeship or other training program, in comparison with the total number or
37 percentage of persons of such race, color, religion, sex, age, national origin, sexual
38 orientation, or persons with disabilities OR ARREST RECORDS OR CONVICTION
39 RECORDS in any community, State, section, or other area, or in the available work
40 force in any community, State, section, or other area.

41 (i) An employer shall be immune from liability, under this article or under the
42 common law, arising out of the employer's reasonable acts to verify the sexual
43 orientation of any employee or applicant taken by the employer in response to a
44 charge filed against the employer on the basis of sexual orientation.

1 16A.

2 IN MAKING A DETERMINATION THAT AN ARREST RECORD OR CONVICTION
3 RECORD IS DIRECTLY RELATED TO EMPLOYMENT OR THAT THE ABSENCE OF AN
4 ARREST RECORD OR CONVICTION RECORD IS A BONA FIDE OCCUPATIONAL
5 REQUIREMENT, AN EMPLOYER SHALL CONSIDER THE FOLLOWING FACTORS:

6 (1) THE PUBLIC POLICY OF THIS STATE TO ENCOURAGE THE
7 EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL
8 OFFENSES;

9 (2) THE SPECIFIC DUTIES AND RESPONSIBILITIES NECESSARILY
10 RELATED TO THE EMPLOYMENT SOUGHT;

11 (3) THE BEARING, IF ANY, THE CRIMINAL OFFENSE OR OFFENSES FOR
12 WHICH THE PERSON WAS PREVIOUSLY CONVICTED WILL HAVE ON THE PERSON'S
13 FITNESS TO PERFORM ONE OR MORE OF THE DUTIES OR RESPONSIBILITIES
14 DESCRIBED IN ITEM (2) OF THIS SECTION;

15 (4) THE TIME THAT HAS ELAPSED SINCE THE OCCURRENCE OF THE
16 CRIMINAL OFFENSE OR OFFENSES;

17 (5) THE AGE OF THE PERSON AT THE TIME OF THE OCCURRENCE OF
18 THE CRIMINAL OFFENSE OR OFFENSES;

19 (6) THE SERIOUSNESS OF THE OFFENSE OR OFFENSES;

20 (7) ANY INFORMATION PRODUCED BY THE PERSON, OR PRODUCED ON
21 THE PERSON'S BEHALF, IN REGARD TO THE PERSON'S REHABILITATION AND GOOD
22 CONDUCT; AND

23 (8) THE LEGITIMATE INTEREST OF THE EMPLOYER IN PROTECTING
24 PROPERTY AND THE SAFETY AND WELFARE OF SPECIFIC INDIVIDUALS OR THE
25 GENERAL PUBLIC.

26 16B.

27 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
28 COMPLAINANT MAY BRING A CIVIL ACTION ALLEGING AN UNLAWFUL EMPLOYMENT
29 PRACTICE RELATED TO THE USE OF ARREST RECORDS OR CONVICTION RECORDS
30 AGAINST A RESPONDENT IF:

31 (I) THE COMPLAINANT INITIALLY FILED A COMPLAINT WITH THE
32 COMMISSION AGAINST THE RESPONDENT ALLEGING THE UNLAWFUL EMPLOYMENT
33 PRACTICE; AND

34 (II) AT LEAST 180 DAYS HAVE ELAPSED SINCE THE FILING OF THE
35 COMPLAINT.

1 (2) (I) A COMPLAINING PARTY MAY NOT COMMENCE A CIVIL ACTION
2 UNDER THIS SUBSECTION FOR AN UNLAWFUL EMPLOYMENT PRACTICE THAT FORMS
3 THE BASIS OF AN ORDER ISSUED BY THE COMMISSION IF A HEARING ON THE
4 RECORD UNDER § 11 OF THIS ARTICLE HAS BEEN COMMENCED BY AN
5 ADMINISTRATIVE LAW JUDGE.

6 (II) AFTER THE BEGINNING OF THE TRIAL OF A CIVIL ACTION
7 UNDER FEDERAL LAW OR THIS SUBTITLE THAT SEEKS RELIEF FOR AN ALLEGED
8 UNLAWFUL EMPLOYMENT PRACTICE, AN ADMINISTRATIVE LAW JUDGE MAY NOT
9 CONTINUE ADMINISTRATIVE PROCEEDINGS UNDER § 11 OF THIS ARTICLE FOR THE
10 SAME ALLEGED UNLAWFUL EMPLOYMENT PRACTICE.

11 (3) ON TIMELY APPLICATION, THE COURT IN A CIVIL ACTION UNDER
12 THIS SECTION MAY PERMIT THE COMMISSION TO INTERVENE BY CERTIFYING THAT
13 THE CASE IS OF IMPORTANCE TO THE GENERAL PUBLIC.

14 (B) A CIVIL ACTION MAY BE FILED UNDER THIS SECTION IN THE CIRCUIT
15 COURT OF THE COUNTY WHERE:

16 (1) THE UNLAWFUL EMPLOYMENT PRACTICE IS ALLEGED TO HAVE
17 BEEN COMMITTED; OR

18 (2) THE RECORDS RELEVANT TO THE UNLAWFUL EMPLOYMENT
19 PRACTICE ARE KEPT.

20 (C) COMPENSATORY DAMAGES AWARDED UNDER THIS SUBSECTION ARE IN
21 ADDITION TO ANY BACK PAY, ANY INTEREST ON BACK PAY, AND ANY OTHER
22 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
23 UNDER ANY OTHER PROVISION OF LAW.

24 (D) FOR EACH COMPLAINANT, THE SUM OF THE AMOUNT OF COMPENSATORY
25 DAMAGES AWARDED UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES,
26 EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF
27 ENJOYMENT OF LIFE, AND NONPECUNIARY LOSS MAY NOT EXCEED:

28 (1) IN THE CASE OF A RESPONDENT WHO EMPLOYS NO FEWER THAN 15
29 AND NO MORE THAN 100 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
30 THE CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

31 (2) IN THE CASE OF A RESPONDENT WHO EMPLOYS NO FEWER THAN 101
32 AND NO MORE THAN 200 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
33 THE CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

34 (3) IN THE CASE OF A RESPONDENT WHO EMPLOYS NO FEWER THAN 201
35 AND NO MORE THAN 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
36 THE CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

37 (4) IN THE CASE OF A RESPONDENT WHO EMPLOYS NO FEWER THAN 500
38 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
39 PRECEDING CALENDAR YEAR, \$300,000.

1 (E) IF A COMPLAINANT SEEKS COMPENSATORY DAMAGES UNDER THIS
2 SECTION:

3 (1) ANY PARTY MAY DEMAND A TRIAL BY JURY; AND

4 (2) THE COURT MAY NOT INFORM THE JURY OF THE LIMITATIONS
5 IMPOSED UNDER SUBSECTION (D) OF THIS SECTION.

6 (F) WHERE APPROPRIATE, AND TO THE EXTENT AUTHORIZED UNDER LAW,
7 THE PARTIES TO ANY DISPUTE ARISING UNDER THIS SUBTITLE IN WHICH THE
8 COMPLAINANT SEEKS COMPENSATORY DAMAGES ARE ENCOURAGED TO USE
9 ALTERNATIVE MEANS OF DISPUTE RESOLUTION, INCLUDING:

10 (1) SETTLEMENT NEGOTIATIONS;

11 (2) CONCILIATION;

12 (3) FACILITATION;

13 (4) MEDIATION;

14 (5) FACT-FINDING;

15 (6) MINI-TRIALS; AND

16 (7) ARBITRATION.

17 (G) IN A CIVIL ACTION UNDER THIS SECTION, THE COURT MAY AWARD
18 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING EXPERT WITNESS FEES, AS
19 THE COURT CONSIDERS JUST, TO THE PREVAILING PARTY.

20 (H) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF, OR THE
21 RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF STATE OR FEDERAL LAW.

22 **Article - Commercial Law**

23 14-1210.

24 A consumer reporting agency which furnishes a consumer report for
25 employment purposes and which for that purpose compiles and reports items of
26 information on consumers which are matters of public record and are likely to have
27 an adverse effect upon a consumer's ability to obtain employment shall:

28 (1) At the time public record information is reported to the user of the
29 consumer report, notify the consumer of the fact that public record information is
30 being reported by the consumer reporting agency, together with the name and address
31 of the person to whom the information is being reported AND OF THE PROVISIONS OF
32 ARTICLE 49B THAT PERTAIN TO ARREST RECORDS AND CONVICTION RECORDS; [or]

33 (2) Maintain strict procedures designed to insure that whenever public
34 record information which is likely to have an adverse effect on a consumer's ability to

1 obtain employment is reported it is complete and up to date. For purposes of this
2 paragraph, items of public record relating to arrests, indictments, convictions, suits,
3 tax liens, and outstanding judgments shall be considered up to date if the current
4 public record status of the item at the time of the report is reported; AND

5 (3) DELETE ANY INFORMATION PERTAINING TO ANY ARREST OF A
6 CONSUMER THAT DID NOT RESULT IN A CONVICTION PRIOR TO REPORTING ANY
7 PUBLIC RECORD INFORMATION TO THE USER OF THE CONSUMER REPORT.

8 **Article - Courts and Judicial Proceedings**

9 5-427.

10 (A) A PERSON OR AN AGENT OR EMPLOYEE OF THE PERSON WHO HIRES AN
11 INDIVIDUAL WITH AN ARREST RECORD OR CONVICTION RECORD THAT IS NOT
12 DIRECTLY RELATED TO THE INDIVIDUAL'S EMPLOYMENT MAY NOT BE HELD CIVILLY
13 LIABLE FOR ANY CLAIM OF NEGLIGENCE RESULTING FROM THE HIRING.

14 (B) THE IMMUNITY DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION
15 MAY NOT EXTEND TO ACTS OR OMISSIONS THAT ARE MALICIOUS OR GROSSLY
16 NEGLIGENT.

17 **Article - Labor and Employment**

18 3-708.

19 (A) AT THE REQUEST OF ANY PERSON PREVIOUSLY ARRESTED OR CONVICTED
20 OF ONE OR MORE CRIMINAL OFFENSES WHO HAS BEEN DENIED EMPLOYMENT, A
21 PRIVATE EMPLOYER SHALL PROVIDE, WITHIN 30 DAYS OF THE REQUEST, A WRITTEN
22 STATEMENT SETTING FORTH THE REASONS FOR THE DENIAL.

23 (B) AN EMPLOYER OR OFFICER OR AGENT OF AN EMPLOYER WHO VIOLATES
24 THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A
25 FINE NOT LESS THAN \$500 AND NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT
26 EXCEEDING 1 YEAR OR BOTH.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 2003.